

ESTATE OF
LOUIS W. KNUDSEN

IBLA 73-311

Decided May 1, 1973

Appeal from decision (A-058571) of Alaska State Office, Bureau of Land Management, denying reinstatement and rejecting an application to purchase a recreation site under the Small Tract Act.

Dismissed.

Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal in the proper office, and the notice, though thereafter filed on the last day of the grace period, was not transmitted within the mandatory time period.

APPEARANCES: Peter W. Knudsen, Administrator for Estate of Louis W. Knudsen.

OPINION BY MRS. THOMPSON

Peter W. Knudsen, the Administrator for the Estate of Louis W. Knudsen, has appealed the January 26, 1973, decision of the Alaska State Office, Bureau of Land Management, which denied reinstatement of an application to purchase five acres of land pursuant to the Small Tract Act of June 1, 1938, 43 U.S.C. §§ 682a-e (1970). The decision stated:

The right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, is allowed in accordance with the regulations in 43 CFR 4.400. See enclosed form. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Peter W. Knudsen was served, by certified mail, with the decision of the State Office on February 1, 1973. The return receipt was signed by Peter W. Knudsen and is postmarked February 1, 1973.

The Department's rules of practice require "[a] person who wishes to appeal to the Board [to] file * * * a notice that he wishes to appeal," which "* * * must be transmitted in time to be filed in the office where it is required to be filed [i.e., the Alaska State Office] within 30 days after the person taking the appeal is served with the decision * * *" 43 CFR 4.411(a). In the instant case, Peter W. Knudsen, by letter dated March 15, 1973, filed a notice of appeal, which was received the same day by the Bureau's Alaska State Office.

The 30-day mandatory time period for filing the notice of appeal began on February 2, 1973, as "* * * the day upon which the decision * * * to be appealed from * * * was served [**3] * * * is not to be included." 43 CFR 4.22(e). The period normally would have ended on March 3, 1973; however, that day was a Saturday, and "* * * the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day." *Id.* Therefore, the period within which the notice of appeal was to be filed ended the following Monday, March 5, 1973.

Although the regulations of the Department provide for a grace period of ten days beyond the mandatory time period, the notice of appeal must meet two requirements:

1. It must be filed within ten days after it was required to be filed, and
2. It must be "* * * determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed." 43 CFR 4.401(a).

In the instant case, even though the first requirement is met by the above discussed filing on March 15, 1973, the second is not met. The notice of appeal is dated March 15, 1973. This compels the conclusion that it was not transmitted to the Alaska State Office on or before March 5, 1973.

In such a situation the notice of appeal cannot be considered and "the failure being jurisdictional, the appeal must be dismissed. 43 CFR 4.411; 4.401; cf. Pressentin v. Seaton, 284 F.2d 195 (D.C. Cir. 1960)." Gerald D. Heden, 6 IBLA 291 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Joan B. Thompson, Member

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member.

